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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/662,456	09/16/2003	Pascal Simon	229971US0	2515
22850	7590	04/01/2008		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
RAMACHANDRAN, UMAMAHESWARI				
ART UNIT		PAPER NUMBER		
1617				
NOTIFICATION DATE		DELIVERY MODE		
04/01/2008		ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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### Office Action Summary

**Application No.**

10/662,456

**Applicant(s)**

SIMON ET AL.

**Examiner**UMAMAHESWARI  
RAMACHANDRAN**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 January 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-8 and 10-32 is/are pending in the application.
- 4a) Of the above claim(s) 24-27 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-8, 10-23, 28-32 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 1/25/2008 has been entered.

Claims 1, 24 and 28 have been amended, claim 9 has been cancelled. Claims 24-27 are withdrawn and claims 1-8, 10-23, 28-32 are examined on the merits herein.

### **Response to Remarks**

Applicants' arguments regarding the defective oath have been considered and the declaration in file will be accepted. Applicants' arguments regarding the 112(2) rejection of claims 30-32 have been considered and found to be persuasive and hence the rejection is withdrawn. The rejection of claims 1-14, 16-23 and 28-32 under 35 U.S.C. 102(b) as being anticipated by McAtee et al. (WO 99/13861) is withdrawn due to the amendment of claims 1, 24 and 28. Amendment of claims necessitated the new rejections presented in this office action. Hence the action is made Non Final.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

Claims 1-8, 10-23, 28-32 are rejected under 35 U.S.C. 103(a) as being unpatentable over McAtee et al. (WO 99113861), Sine et al. (US 6,183,766) and Yamazaki et al. (US 5,980,924).

McAtee et al. teach a substantially dry personal cleansing article for cleansing the skin or hair by Wetting the dry article with water, comprising a water-insoluble substrate (e.g. a non-woven synthetic or natural material) having multiple layers. See Abstract; p. 9, lines 23-27; p.18, lines 21-37; p. 63, lines 22-27; p. 64, line 21; p. 68, lines 17-19. The reference further teaches emulsifier (0.1%-20%) in the composition that is capable of forming an emulsion of the internal and external phases and are oil soluble and HLB values typically ranging from about 1 to about 7 (p 37, lines 36-37 and p 38, lines 1-13). The reference teaches sorbitan esters, glyceryl esters, polyglyceryl esters etc (p 38, lines 14-37, p 39, lines 1-6). The article of McAtee et al. is impregnated with a substantially anhydrous composition (i.e. containing preferably less than about 5% by weight of water and more preferably less than about 1% by weight of water) comprising 0.5-12.5% of a lathering surfactants, such as non-ionic lathering surfactants (e.g. polyhydroxy fatty acid amides, alkoxylated fatty acid esters, lathering sucrose

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esters, etc.); 0.05-99% of a conditioning component such as mineral oil, petrolatum, fatty esters, silicone oils, vegetable oils; and 0.05-0.5% of hydrophilic thickeners and viscosity modifiers such as crosslinked polyacrylic resins (e.g. Carbopol). See p. 23, line 7; p. 25, line 23 - p. 27, line 8; p. 30, line 30 - p. 35, line 34; p. 37, lines 21-28; p. 38, lines 11-12, 14-26. The substrate can be made into a variety of shapes and forms including flat pads, thick pads, thin sheets; square, round, rectangular or oval pads. See p. 19, lines 22-30. The article of McAtee et al. may contain additional ingredients such as lipophilic or hydrophilic active agents, lipids such as beeswax or other waxes, colorants, perfumes, antioxidants, etc. Seep. 40, lines 9-36; pp. 52-62; p. 63, lines 4-20. The article of McAtee et al. comprises 0.25-150% of the impregnating composition by weight of the substrate. See p. 36, lines 24-35. The reference teaches that triglyceryl monostearate can be added as an ingredient in optional conditioning emulsion (p 70, Heading III. Optional Conditioning Emulsion). The HLB value of triglyceryl monostearate is 8.8 (Scharp et al. US 3,946,122, col. 13, 14, Table 1, line 7).

McAtee does not explicitly teach an emulsifying surfactant in the composition with a HLB value of 8-14 though the reference teaches triglyceryl monostearate as an optional conditioning emulsion.

Sine et al. teach compositions for sanitizing and moisturizing skin surfaces comprising silicone oils (col. 2, lines 1-5, col. 3, lines 41-50), 0-60% water, optionally 0-10% thickeners, hydrophilic gelling agents including acrylic acid/ethyl acrylate copolymers, carbopol 980, 940, Carbopol ultrez 10 etc (col.10, lines 42-67, col. 11, lines 28-30). The reference teaches optionally but preferred agents added are surfactants

(0.1-5% by weight) chosen from emulsifying surfactants having an HLB value of about 3-12. This range includes the range of surfactants with a HLB value of 8-14 as claimed in the instant application. Also, the reference teach that the sanitizing and moisturizing skin compositions can also be, optionally, incorporated into a insoluble substrate for application to the skin such as in the form of a treated wipe (col. 16, lines 32-36). In summary, Sine et al. teach an anhydrous or hydrated composition (water 0-60% water) comprising silicone oils, optional addition of thickeners, hydrophilic gelling agents and emulsifying surfactants (HLB of about 3-12).

Yamazaki et al. teach a skin cleansing sheet impregnated with 1-50% of non-ionic surfactant having an HLB of 10-16 (see abstract, col.15, claim 1).

It would have been obvious to one of ordinary skill in the art at the time of the invention to add emulsifying surfactants of HLB value 8-14 in an article such as wipe because of the teachings of McAtee, Sine and Yamazaki et al. McAtee teach that triglyceryl monostearate (HLB 8.8) can be added as an optional ingredient for conditioning emulsion in the composition comprising oils, hydrophilic gelling agent and emulsifying surfactant. Sine teaches a composition comprising silicone oils, hydrocarbon oils, thickeners and addition of emulsifying surfactants to a sanitizing and moisturizing composition. The reference teach that emulsifying surfactants having an HLB value of about 3-12 can be added to the composition and further teach that compositions can also be, optionally, incorporated into a insoluble substrate for application to the skin such as in the form of a treated wipe. The teachings of Yamazaki et al. substantiate the teachings of Sine by teaching a skin cleansing sheet impregnated

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with 1-50% of non-ionic surfactant having an HLB of 10-16. One having ordinary skill in the art would have been motivated to add emulsifying surfactants in the range of 8-12 in an article like wipe as claimed because of expectation of success from Sine et al.'s and Yamakazi et al.'s teachings.

The references do not explicitly teach the claimed viscosity of the impregnating composition. However, determination of optimal or workable viscosity of the impregnating composition by routine experimentation is obvious absent showing of criticality of the claimed viscosity. One having ordinary skill in the art would have been motivated to do this to obtain the desired deposition of the conditioning components onto the skin or hair.

### **Response to Arguments**

Applicant's arguments with respect to the rejections of the claims have been considered but are moot in view of the new grounds of rejection.

### **Conclusion**

No Claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to UMAMAHESWARI RAMACHANDRAN whose telephone number is (571)272-9926. The examiner can normally be reached on M-F 8:30 AM - 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Sreeni Padmanabhan can be reached on 571-272-0629. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/SREENI PADMANABHAN/  
Supervisory Patent Examiner, Art Unit 1617